Ontario

Office of the Conflict of Interest Commissioner

Annual Report 2013-2014

Conflicts can be examined through different lenses.

Office of the Conflict of Interest Commissioner

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Office of the Conflict of Interest Commissioner

Bureau du commissaire aux conflits d'intérêts

June 30, 2014

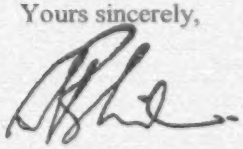
The Honourable Deb Matthews
Deputy Premier
President of the Treasury Board
Minister Responsible for Poverty Reduction
4th Floor, Suite 4320
Whitney Block
99 Wellesley Street, West
Toronto, ON M7A 1W3

Dear Minister:

Re: Office of the Conflict of Interest Commissioner Annual Report

I am pleased to present to you the Annual Report of the Office of the Conflict of Interest Commissioner for the fiscal year 2013-2014.

Yours sincerely,



Sidney B. Linden
Commissioner

Contents

Commissioner's Message 1

Mandate, Vision, Values 3

Mandate 3

Our Vision 3

Our Values 4

2013/14 Operational Performance 5

1. Making decisions and offering advice 5

Acting as ethics executive 5
Assisting other ethics executives, officials or offices 6
Considering requests to participate in political activities 6
Receiving and providing advice on public servants' financial declarations 6

2. Reviewing & approving Rules 7

Advising on, reviewing and approving rules submitted by public bodies 7
Identifying and sharing organizational best practices 8

3. Developing and delivering education & awareness sessions 10

Contributing to general understanding of the legislative framework and rules ... 10

4. Building organizational capacity 11

Meetings with subject-matter experts 11

Performance Measurement 5

COIC's Performance Measurement Logic Model 13

OUTLOOK FOR 2014/15 14

Illustrative Case Summaries 15

Conflict of Interest 15

Political Activity 19

APPENDICES **21**

1. Appointees 21

2. Number of Matters Considered 22

3. Financial information 23

4. Ontario Regulation 381/07 24

COMMISSIONER'S MESSAGE

As our Annual Report cover illustrates, conflicts of interest are often examined through different lenses. Our perspectives are often shaped by our proximity to an issue –Are we personally involved? Are we colleagues or friends of the persons involved? Are we required to provide oversight, advice or decisions? Are we impartial, neutral observers?

The 2013/14 fiscal year was a challenging one for ethics in the public sector in Canada. There were many well-publicized reports of ethical issues at the federal, provincial and municipal levels of government. Despite Ontario's, and Canada's, long history of good and trustworthy governance, these "events" have nevertheless helped to underline the important role of ethics offices in providing guidance and preserving public confidence in government.

The strength of Ontario's ethical framework is that it is comprehensive and inclusive. The *Public Service of Ontario Act, 2006 (PSOA),* established a system for dealing with conflict matters that covers almost all public servants, whether they work in a ministry or agency. However, there is always room for improvement.

2013/14 was an important year for this Office. In addition to handling matters that require our attention on a daily basis, significant attention was devoted to putting in place the infrastructure to allow us to play a greater leadership and transformational role across the Ontario government. For example, our activities included:

- Strategic planning
  - Our team engaged in two half-day workshops to develop our shared vision, goals and values.
- Better alignment of staff and fiscal resources
  - As we mature as an organization and the matters that are brought to our attention become more complex, we continue to better align staff and processes to meet future challenges.
- Production of educational videos
  - By partnering with the Ministry of Education and the Ministry of Training, Colleges & Universities, we have made available, on our

website, four new educational videos on common conflict of interest issues faced by public servants.

- Restructuring of ethics executives' orientation sessions
  - We introduced video conferencing to increase accessibility for remote participants and expanded the invitation list to include other board members and executives who could benefit from the sessions.

Further details on these and other initiatives are contained in this report.

I am proud of our accomplishments this year and look forward to reporting on the impact of our work in building and sustaining a public sector that is ethical, non-partisan, professional and competent.

The Honourable Sidney B. Linden
Commissioner

Mandate,
Vision,
Values

MANDATE, VISION, VALUES

Mandate

The Office of the Conflict of Interest Commissioner (OCOIC) is governed by the *Public Service of Ontario Act, 2006,* and its regulations. The *PSOA* is intended to strengthen the ethical and accountability framework governing the Ontario Public Service, and provides for the appointment of a Conflict of Interest Commissioner.

The Commissioner's mandate is contained in the *PSOA* and its accompanying regulations. The *PSOA* assigns the Commissioner a leadership role in contributing to public servants' understanding of the conflict of interest and political activity rules and the interpretation of those rules. The *PSOA* also explicitly assigns to the Commissioner responsibility to act as ethics executive for certain conflict of interest and political activity matters for specified public servants.

The Commissioner fulfills this mandate in three ways:

- Contributing to public servants' understanding of, and compliance with, conflict of interest rules
- Encouraging excellence and consistency in the application of conflict of interest rules
- Being a leader in promoting ethical conduct

In April, 2010, with the proclamation of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (*ATAGAA*), the Commissioner was also assigned responsibility for approving the ethics plans for Ontario's tribunals. The objective of these ethics plans is to ensure that tribunal board members are familiar with the ethical requirements associated with their positions.

Our Vision

A province where people trust government.

Our Values

The OCOIC has established values to guide us as we deliver on our E.T.H.I.C.S mandate:

Efficient: ***We maximize our resources to deliver quality services.*** As a publicly-funded office, our expenditure policies reflect our accountability for the effective and responsible stewardship of public resources. We work to meet or exceed the Ontario government service standards established for the functions of our office with respect to inquiries and feedback, taking into consideration the need for enough flexibility to investigate sufficiently and respond appropriately.

Transparent: ***Our procedures are accessible, easy to understand and open.*** We provide anyone who contacts our office with the information necessary to easily understand our role and our procedures. We also balance the need to adequately protect an individual's privacy with the need to disclose information where the Commissioner has an obligation to do so.

Helpful: ***We support public servants to be non-partisan, professional, ethical and competent.*** We develop procedures and practices with a view to meeting the highest ethical and legal standards.

Independent: ***Our determinations and advice are free from the control and influence of others.*** Administratively, our office is accountable to the government as one of its agencies. However, the Commissioner provides independent advice and decisions, subject only to the potential for judicial review.

Consistent: ***We treat people fairly but not necessarily the same.*** In keeping with the government's objective of promoting consistency in the application and interpretation of the ethical framework, we have developed processes that allow us to apply our growing body of knowledge about conflict of interest and political activity matters in a consistent manner.

Strategic: ***We leverage our unique position of trust and responsibility within Ontario's ethical framework.*** We are committed to continually advancing and updating our knowledge and to monitoring developments in other jurisdictions to ensure that we are aware of approaches that might enhance our own practices.

2013/14
Operational
Performance

2013/14
OPERATIONAL PERFORMANCE

In 2013/14, as in previous fiscal years, the OCOIC focused its activities in four key areas:

1. Making decisions and offering advice
2. Reviewing and approving conflict of interest rules
3. Developing and delivering education and awareness sessions
4. Building organizational capacity

The Commissioner's responsibilities can be viewed as either activities prescribed in the legislation (i.e., *PSOA* and *ATAGAA*), such as acting as ethics executive for certain individuals, or as activities that are implicit in the Commissioner's role in advancing the underlying intent of the legislation. This year, our office dealt with **130** inquiries. Of these, **87 (67%)** related to conflict of interest, **five (3%)** related to political activity and **seven (5%)** related to financial declarations and rules approval. The remaining **31 (24%)** involved inquiries about other ethical issues.

1. Making decisions and offering advice

Acting as ethics executive

The Commissioner is the ethics executive for chairs of designated public bodies, the Secretary of Cabinet, and other specified individuals. In this capacity, the Commissioner is responsible for providing these individuals with advice or direction on situations or activities that may have an ethical impact on their ability to fulfill their public duties.

During this fiscal year, the Commissioner provided advice, information and/or direction, as ethics executive, on **20** matters involving conflict of interest.

Assisting other ethics executives, officials or offices

Like the Commissioner, other senior officials, such as deputy ministers and chairs of public bodies, have responsibilities under the *PSOA*. They may be called upon to provide advice on the application of the conflict of interest and political activity rules or determine whether a conflict of interest exists or a certain political activity is permitted.

To assist senior officials or offices in fulfilling these ethics executive responsibilities, the *PSOA* provides that they may seek the Commissioner's guidance. The ethics executive retains decision-making responsibility for the matter in these situations. In some situations, an ethics executive may seek to refer a matter to the Commissioner. In accepting such a request, the Commissioner assumes the decision-making responsibility.

In 2013-14, other ethics executives sought information and advice from the Commissioner on **67** matters.

Considering requests to participate in political activities

The *PSOA* sets out political activity rights and restrictions for all public servants, and also allows individuals to seek permission to participate in certain activities that are not otherwise permitted. Part-time appointees to some public bodies must seek such authorization from the Commissioner, as must public servants for whom the Commissioner is the ethics executive. These requests for authorization are most common during an election period. In 2013-14, the Commissioner made **one** political activity determination and provided information and/or advice on **four** political activity requests.

Receiving and providing advice on public servants' financial declarations

Pursuant to sections 10 to 13 of Ontario Regulation 381/07 under the *PSOA* (See Appendix 4), public servants who routinely work on matters that might involve the private sector must make a financial declaration to the Commissioner. The financial declaration discloses certain financial interests, including those of specified family members. A revised declaration must be submitted to the Commissioner when there is a change in financial information that must be disclosed.

The Regulation imposes the following requirements on the Public Service Commission (PSC):

- Maintain a list of positions in which public servants routinely work on matters that might involve the private sector, and

- Ensure that those public servants are advised of their duty to submit a financial declaration form to the Commissioner.

In addition, every ethics executive is required to notify the PSC of changes to be made to the list with respect to those persons working in such positions for whom he or she is the ethics executive.

Unfortunately, this process has not worked as effectively as it should have in the past. This year the Commissioner only dealt with **three** financial declarations from Ontario public servants who acted on their own initiative. However, at our urging, the Public Service Commission has recently reviewed and revised the process for identifying public servants who are required to complete and submit a financial declaration. We will be reporting on the outcomes of that process in our next Annual Report.

2. Reviewing & approving Rules

Advising on, reviewing and approving rules submitted by public bodies[1]

The conflict of interest rules that apply to public servants working in government ministries also apply to public servants appointed to or employed by public bodies. These rules are set out in Ontario Regulation 381/07 and specify the activities that could put a public servant at risk of a conflict of interest.

While the rules are intended to be broad enough to cover most situations, the *PSOA* allows public bodies to develop their own rules for the Commissioner's review and approval. To meet with the Commissioner's approval, proposed rules must, at a minimum, meet the degree of ethical conduct provided for in the regulation.

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[1] The term "public bodies" means the agencies, boards, and Commissions that are subject to the *PSOA* and its regulations.

One of the government's objectives in formulating the regulation was to have a consistent set of rules for all public servants. Accordingly, early in our mandate, we encouraged public bodies to rely on the regulation wherever possible. We suggested that public bodies only submit rules for approval if their unique mandates gave rise to increased likelihood of potential conflicts and additional rules were necessary to address those circumstances.

This year, we completed our review of all previously-approved rules for public bodies. As a result, most previously-approved rules have either been amended or removed from the COIC website. Public bodies whose rules have been removed will rely on the requirements set out in Regulation 381/07. The rules of **nine** public bodies remain on the website.

The Commissioner is also required to review and approve adjudicative tribunals' ethics plans, in accordance with ATAGAA. This year, the Commissioner reviewed and approved the ethics plans of **four** tribunals.

Identifying and sharing organizational best practices

On occasion, and sometimes in the course of addressing a specific conflict of interest or political activity matter, the Commissioner may become aware of and provide advice on introducing or revising an organizational policy or practice. The Commissioner provides advice of this nature if he is of the view that the change would better align with the *PSOA* and minimize the risk that situations of concern will arise. As well, ethics executives may seek the Commissioner's advice regarding the general application of the *PSOA* in situations that may be particular to the mandates of their organizations.

Below is an example of good practice that the Commissioner supported in this year.

Local Health Integration Networks

The Local Health Integration Networks (LHINs) are a group of 14 Crown agencies who work with local health providers and community members to determine the health service priorities of their regions. The LHINs plan, integrate and fund local health services such as hospitals, community care access centres, and community health centres.

Issue:

In an effort to promote consistency and to be proactive in assessing conflict of interest matters, the LHINs have developed a template CEO employment agreement that is available for use by all 14 LHINs. This template includes a provision requiring prospective CEOs to identify, to the LHIN Chair, any potential conflicts of interest that he or she may have. However, if appointed and employed by the LHIN, the Commissioner, not the Chair, will become the prospective CEO's ethics executive.

Solution:

In order to minimize the potential for inconsistent advice, the LHINs proposed that prospective CEOs disclose potential conflicts of interest to the Commissioner, prior to their appointment and employment as CEO.

COIC Comments:

The Commissioner agreed to review potential conflicts of interest identified by prospective LHIN CEOs. The LHIN Chair will consult with the Commissioner, who will provide the Chair with advice on whether there are any conflicts of interest, and if so, how these could be mitigated. The Chair will provide the prospective CEOs with direction upon receiving the Commissioner's advice. The Commissioner would not take any position on the suitability of the prospective CEO. The Commissioner would rely on the LHINs to assist with information-gathering and assessing the intersections between the role of a CEO and any other interest a prospective candidate may have.

3. Developing and delivering education & awareness sessions

Contributing to general understanding of the legislative framework and rules

The introduction of the *PSOA* established a broader definition of "public servant". A result of the broader definition is that in-service and post-service restrictions on certain activities are applicable not only to ministry employees, but also to appointees (i.e. board members) and employees of government agencies that are identified by regulation as public bodies.

As part of our education and awareness mandate, the Commissioner hosts quarterly sessions with all newly appointed chairs and reappointed chairs of public bodies who had not been previously oriented. These sessions provide an opportunity to orient these appointees on their responsibilities as ethics executives, and to review the ways in which the Commissioner can assist them in fulfilling their ethics oversight responsibilities. Improvements to the delivery of the sessions were made in three key areas this year:

1. In addition to inviting the chairs of public bodies, invitations were extended to other directors and executives within those organizations who could also benefit.

2. Real-time webcasting was added to make it easier for long-distance and remote invitees to participate.

3. Educational accreditation from the Law Society of Upper Canada for 1.0 Professionalism Hour(s) and 1.0 Substantive Hour was secured for the benefit of lawyers who attend the sessions.

As a result of these improvements, this year the Commissioner met with **46** newly appointed or reappointed chairs and other public body staff.

4. Building organizational capacity

The Commissioner has devoted considerable attention to defining the scope of his responsibilities and to developing the procedures and tools for carrying out those responsibilities. Although not a specific legislative mandate, education and awareness is key to building organizational capacity and a "culture of ethics", in the OPS and the agency sector.

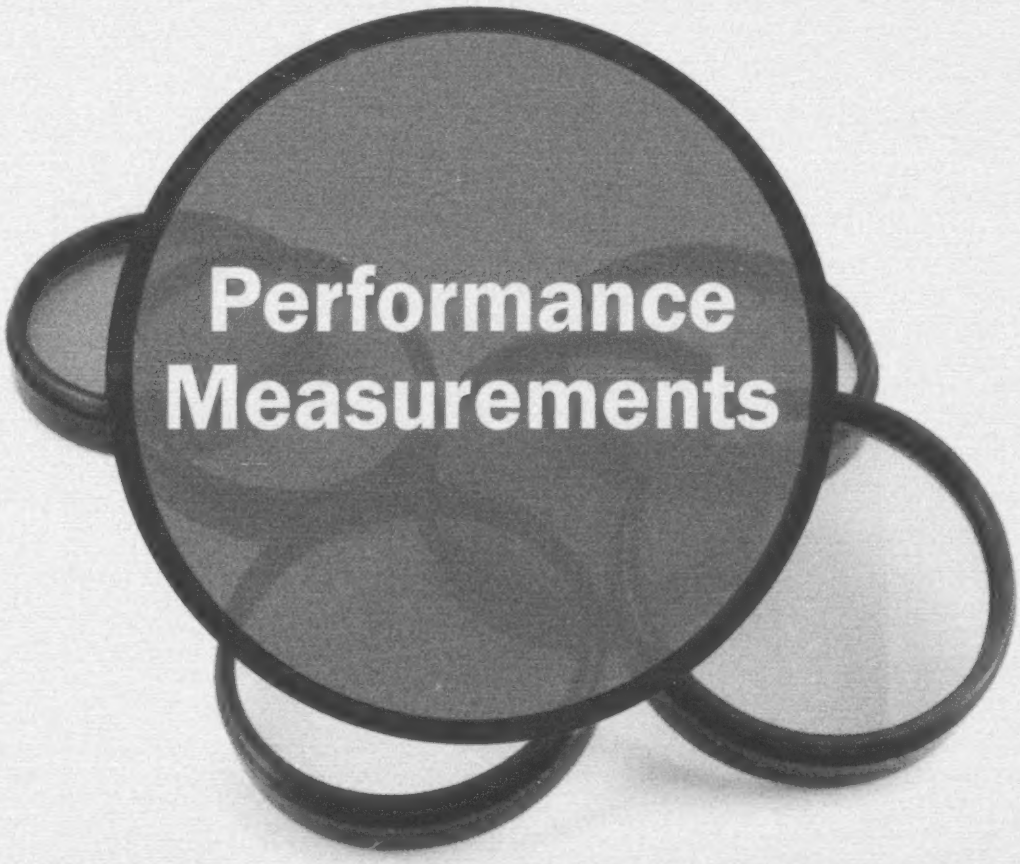
This year, by building on a product previously produced jointly by the Ministry of Education and the Ministry of Training Colleges & Universities, the Commissioner created **four** training videos depicting common conflict of interest scenarios faced by public servants. These videos can be viewed separately or as a full series to train staff on Ontario's conflict of interest rules. The videos can be viewed on the Commissioner's website at http://www.coicommissioner.on.ca.

The Commissioner also does outreach presentations and delivers speeches to various audiences both internal and external to the Ontario Public Service. This year, our office delivered **16** presentations (including three ethics executives' orientation sessions), several of which were the result of follow-up requests from previous presentations.

Meetings with subject-matter experts

Our office occasionally arranges opportunities to meet with, and learn from, subject-matter experts who provide valuable insight or training on topics relevant to the Commissioner's mandate.

This year the Commissioner invited two distinguished speakers to lunch and learn sessions with our Office: Professor **Ian Greene** from the School of Public Policy and Administration at York University, who specializes in ethics and public administration, and **Janet Leiper**, Integrity Commissioner for the City of Toronto. The session with Ms. Leiper was held jointly with the Office of the Integrity Commissioner.


Performance
Measurements

PERFORMANCE MEASUREMENT

In order to help achieve our vision of a province where people trust government, our office must play a key role in creating a culture of ethics in public sector institutions. This task, however, is more art than science. Hence, it is imperative to develop a robust performance measurement framework that allows the collection and tracking of data in order to measure the efficacy of our office.

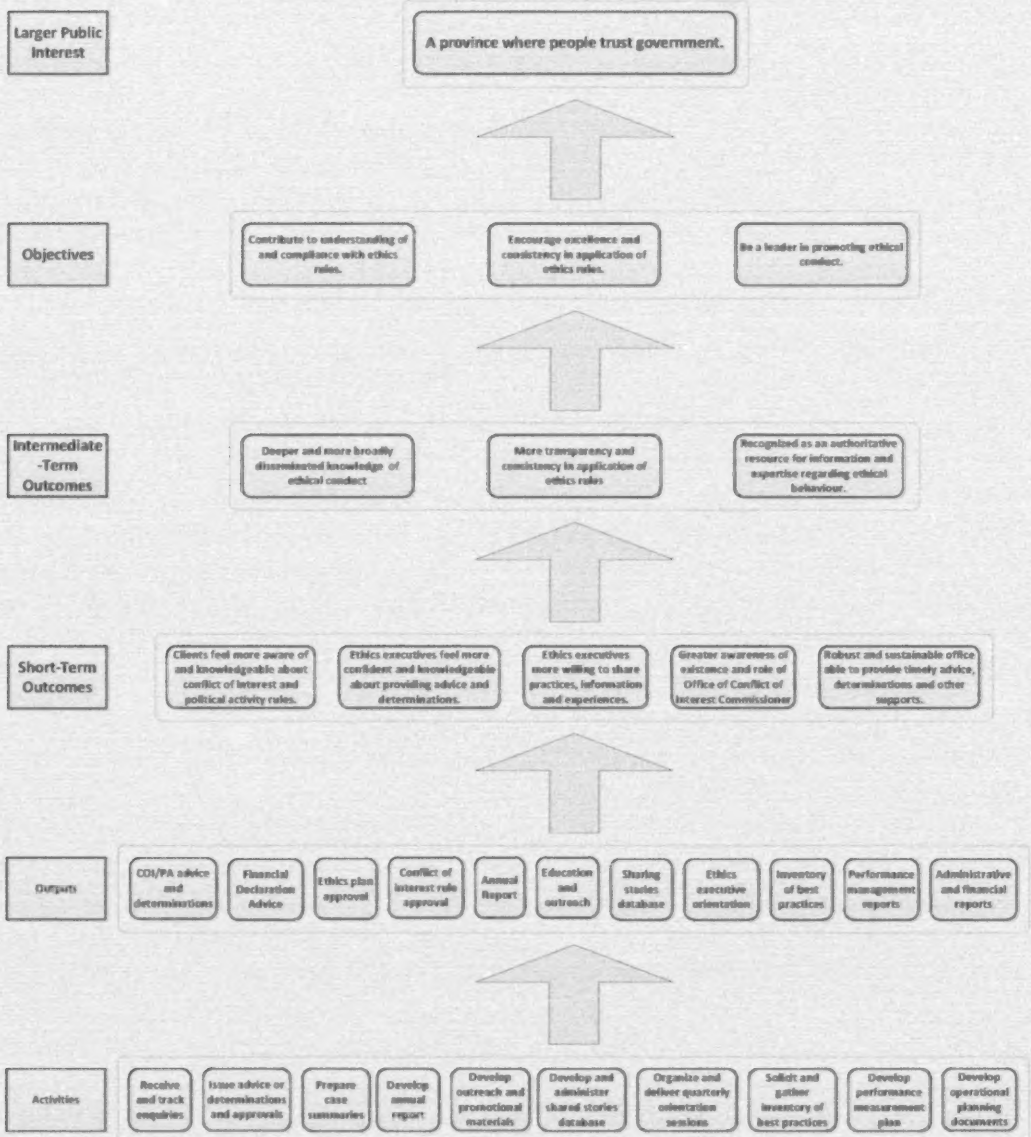
We invested considerable effort in the last quarter of 2013/14 to research, discuss and develop a performance measurement framework and system that is tailored to our environment. We identified input, output and outcome measures linked to the three key themes of efficiency, effectiveness and satisfaction. Below is the logic model on which our performance measurement system is based. With a system now in place and the key data sources identified, we have begun to collect baseline data for 2013/14. We will be in a position to report more fully on these measures, and on the results and impacts of our services, in the 2014/15 Annual Report.

As in the past, our office is required to adhere to the Ontario government's customer service standards for timeliness in responding to enquiries. We make every effort to meet or exceed those targets each time our office is contacted. The customer service targets require us to acknowledge all inquiries within five business days and provide a final response or request for additional information within 10 business days of the initial enquiry. When additional information is requested or a meeting required, we aim to provide a response within 10 business days of receiving the information.

In 2013/14, the office achieved a **98%** success rate in acknowledging inquiries or holding the meeting and a **99%** success rate in providing final responses. The office continues to receive complimentary feedback on the timeliness and quality of the responses provided.

As required by policy, a mechanism is in place for "customers" to submit formal complaints about the service they receive from our office. As in previous years, there have been no complaints submitted to the COIC, either formally or informally.

COIC's Performance Measurement Logic Model


Larger Public Interest
A province where people trust government.
Objectives
Contribute to understanding of and compliance with ethics rules.
Encourage excellence and consistency in application of ethics rules.
Be a leader in promoting ethical conduct.
Intermediate -Term Outcomes
Deeper and more broadly disseminated knowledge of ethical conduct
More transparency and consistency in application of ethics rules
Recognized as an authoritative resource for information and expertise regarding ethical behaviour.
Short-Term Outcomes
Clients feel more aware of and knowledgeable about conflict of interest and political activity rules.
Ethics executives feel more confident and knowledgeable about providing advice and determinations.
Ethics executives more willing to share practices, information and experiences.
Greater awareness of existence and role of Office of Conflict of Interest Commissioner
Robust and sustainable office able to provide timely advice, determinations and other supports.
Outputs
COI/PA advice and determinations
Financial Declaration Advice
Ethics plan approval
Conflict of interest rule approval
Annual Report
Education and outreach
Sharing stories database
Ethics executive orientation
Inventory of best practices
Performance management reports
Administrative and financial reports
Activities
Receive and track enquiries
Issue advice or determinations and approvals
Prepare case summaries
Develop annual report
Develop outreach and promotional materials
Develop and administer shared stories database
Organize and deliver quarterly orientation sessions
Solicit and gather inventory of best practices
Develop performance measurement plan
Develop operational planning documents

OUTLOOK FOR 2014/15

The OCOIC will continue to focus on building a culture of ethics in the public service.

- We will enhance our website to make it easier to navigate and to find relevant and current information on conflict of interest matters. The site will host educational videos and the Commissioner will share his thoughts on current ethical issues through a regular blog.
- We will build the mechanism through which ethics executives can share their experiences dealing with conflict of interest issues in their organizations. The sharing of experiences will enable ethics executives to learn from each other, and support consistency in the application of the rules and capacity-building among ethics executives.
- We will focus on implementing and perfecting our performance measurement system so that it becomes a leading model among ethics organizations. We will generate awareness and promote our progress in different fora (e.g. at the annual conference of the Council on Governmental Ethics Laws (COGEL) and in presentations to internal audiences).
- We will expand attendance at our orientation sessions to include designated agency ethics executives for whom the Commissioner is also ethics executive.
- The OCOIC will work with the Ministry of Government Services to implement the regulatory requirements related to financial declarations.
    - We will streamline the process and automate the financial declaration form that public servants need to use to submit their financial declarations to the Commissioner.
    - We will assist with clarifying the conditions under which a revised declaration must be submitted by public servants.

ILLUSTRATIVE CASE SUMMARIES

The following case summaries are examples of some of the inquiries or requests the Commissioner addressed this year. These summaries are intended to assist public servants and decision-makers in interpreting the conflict of interest and political activity rules, and applying these rules to similar situations. To protect the privacy of the individuals involved, pseudonyms are used throughout.

Conflict of Interest

1. Worlds colliding?

B was an appointee to the board of a public body. He was also on the board of another entity. Recently, the public body's mandate had changed and the two organizations would now have more contact than before. The chair of the public body asked the Commissioner for advice about whether B could be reappointed to the public body when his present term expired.

The Commissioner advised that conflicts of interest could arise for B because of his obligations to the public body and the other organization. The Commissioner suggested some ways to mitigate such conflicts such as having B recuse himself from matters where both organizations had an interest. The Commissioner cautioned that if such matters arose often B might not be able to make a useful contribution to the public body and may have to step down from one of the organizations.

(O. Reg. 381/07, s. 5, 6, 8 and 9)

2. Accepting all applicants

M was an appointee to a public body. He wanted to apply for a job at the same public body. M's ethics executive asked the Commissioner for advice about what steps the public body could take to minimize the potential for conflicts of interest.

The Commissioner confirmed that the conflict of interest rules do not bar the appointee from applying for jobs within the public body. However, if a public body hires an appointee, concerns may arise about whether the appointee received preferential treatment or used his appointee position to get the job.

In order to minimize the risk of preferential treatment being given, the Commissioner advised the ethics executive to take steps to:

(1) Make sure that the job description does not favour M.
(2) Make sure that the job is open to other applicants.
(3) Do not assign staff who have had significant contact with M to conduct the competition.

The Commissioner also noted the following:

(1) Public bodies should not involve an appointee in discussions about a future opening if they might consider that person for the job.
(2) An appointee who gets a job with a public body should not continue in the position of an appointee in that public body.

(O. Reg. 381/07, s. 3, 6, and 8)

3. Participant and decision-maker?

D was the chair of a public body. D also benefitted from some of the programs which the public body regulates, funds, and oversees. Due to the unique nature of the public body, it could not function effectively without the experience and expertise of members like D. D asked the Commissioner for a determination about whether she could take part in making decisions about those programs in her capacity as chair.

The Commissioner determined that D risked contravening sections 3, 6 and 9 of the conflict of interest rules in Ontario Regulation 381/07. Although she might be allowed to act as both participant and decision-maker in some situations, each situation would need to be evaluated as it arose. D would need to recuse herself from participating in certain discussions or decisions relating to the programs in which she was also a participant. The Commissioner suggested that D consider two questions before taking part in the decision-making process about such programs:

(1) How much could she influence decisions about the program if she took part in the decision-making process?
(2) How likely is it that she would benefit from the decisions or from taking part in the decision-making process?

Decisions made by the board in relation to a single program participant, although infrequent, are influential in that they could set a precedent for agency operations which could benefit other recipients of that program. Therefore, there is a high risk of D contravening the conflict of interest rules should D participate in these types of discussions or decision-making.

The Commissioner cautioned that there was no clear line to show when D should not take part in making decisions about those programs. In each case D would have to consider the relationship between her actions and any potential benefit, and recuse herself accordingly.

(O. Reg. 381/07, s. 3, 6 and 9)

4. Family ties?

G was a public servant. His cousin was also his ethics executive. The ethics executive referred the matter to the Commissioner for a determination about how to minimize the potential conflicts of interest.

Section 7 of Ontario Regulation 381/07 sets out a list of persons public servants cannot supervise. Although, cousins are not on the list of relationships in section 7, the Commissioner determined that there was potential for the ethics executive to give preferential treatment, or appear to give it, to her cousin. The potential for this kind of conflict can arise whenever there is an existing connection between the parties.

The Commissioner considered the potential for interactions between G and his ethics executive in their day to day roles. The Commissioner concluded that G and his ethics executive had a low potential for routine interactions. Although, there was some potential that they would be involved in non-routine interactions, G could delegate these responsibilities.

The Commissioner directed G to have no involvement in the operations of the ethics executive's office. He directed both G and his cousin to make sure that any interactions between them were open and transparent.

(O. Reg. 381/07, s. 6 and 7)

5. The return of a former public servant

H was a former public servant. The public body where H had worked issued an RFP. H wanted to work on responding to the RFP for his new employer. While still a public servant, H had advised the Crown on a similar project. H's new employer had been involved in that project. There was no indication that H was seeking preferential treatment or using confidential information improperly. The public body asked the Commissioner to make a determination about whether H could assist his new employer to respond to the RFP.

Under the post-service conflict of interest rules, a former public servant who previously held a "designated senior position" may not take a job with certain employers. However, this only applies if the person had "substantial" involvement with the new employer in his or her last 12 months as a public servant. In similar cases, the Commissioner indicated that activities like merely sharing information or overseeing staff do not reach the "substantial" involvement level. In this case, H had not had decision-making authority with respect to the RFP and had not managed the public body's relationship with his future employer. The Commissioner determined that H had not been substantially involved with his new employer while he was still a public servant, and was therefore was able to assist his new employer to respond to the RFP.

(O. Reg. 381/07, s. 19)

6. Information from a former public servant

R was a former public servant who had worked in a public body, and who had had the responsibility of reviewing funding applications for the public body. The public body subsequently became involved in a hearing with an entity who had previously applied for funding. R was asked by the entity to provide information about her prior review of its application, and she did so. The public body considered this information to be confidential information. The public body, for which R was a former employee, asked the Commissioner to make a determination as to whether R had contravened the conflict of interest rules by providing the entity with this information.

The Commissioner determined that while the information R provided may have been true, R was not permitted to assist the entity by providing this information, some of which was confidential information. R had previously been involved in evaluating the entity's application for funding from the public body, and providing this information would be in contravention of sections 17 and 20 of the conflict of interest rules in Ontario Regulation 381/07.

The Commissioner concluded that an applicant for funding might have interests that are potentially adverse to the interests of a public body and that by advising the entity, R could undermine the public body's ability to protect its interests.

The Commissioner directed R to take steps to withdraw the information R had already provided to the entity from the hearing process.

(O. Reg. 381/07, s. 17 and 20)

Political Activity

1. Vote for us...

J was an appointee to a public body. She wanted to serve in a time-limited, high-profile position with a provincial political party. The chair of the public body asked the Commissioner for advice about whether J could take the job.

J was not a specially restricted public servant. As such she could engage in any political activity that is not specifically prohibited or restricted. In assessing whether this activity was restricted, the Commissioner considered that J's role would be highly visible, involved participation in fundraising discussions and potentially soliciting funds for the campaign. The Commissioner recommended that J take an unpaid leave of absence until her job with the political party ended. While she was on unpaid leave of absence, J would still be a public servant and would have to abide by the political activity restrictions in the *PSOA*. The Commissioner directed J to maintain a distinction between her political role and her public servant role. She would not be allowed to do any of the following:

i. Use her position as a public servant for personal benefit;

ii. Use or disclose any confidential information she obtained through her public servant role; and

iii. Offer assistance in dealing with the provincial government to any persons or entities connected to the political party.

(PSOA s. 64, 77 and 79)

2. Vote for me...

L was the chair of a public body and he wanted to stand for election as a municipal councillor. He asked the Commissioner whether he could run for this office.

As L was not a non-specially restricted public servant, he could run in a municipal election and serve as a municipal councillor as long as these activities did not (1) interfere with the performance of the chair's duties, and (2) conflict with the interests of the public body. The Commissioner considered the following factors:

- Time commitments and the impact on L's duties;
- Stakeholders the public body and the municipality have in common;
- The likelihood that candidates or councillors could comment on or make decisions related to the public body or the Ontario government;
- Intersection of the public body's and the municipality's interests, and the likelihood that L would advise on or be a party to discussions or decisions on issues impacting the municipality or municipalities in general; and
- L's ability to avoid taking part in discussions and decisions at the municipality or public body while carrying out his duties as chair.

The Commissioner determined that L could stand for election and serve as a municipal councillor provided that L complied with certain restrictions including not commenting publicly on matters that are directly related to his duties as chair and not engaging in political activity while specifically performing his duties as chair.

(PSOA s. 72, 77, 79 and 101)

Appendices

APPENDICES

1. Appointees

In accordance with the memorandum of understanding, the annual report is to include "the name of any appointees including when each was first appointed and when the current term of each appointment expires."

Appointee	Effective Date of Appointment	End of Term
Sidney B. Linden	July 30, 2007	July 29, 2015

2. Number of Matters Considered

Fiscal Year	Total Number of Matters
2007/08	90
2008/09	115
2009/10	189
2010/11	121
2011/12	177
2012/13	130
2013/14	**130**

3. Financial information

FINANCIAL INFORMATION FOR FISCAL YEAR 2012-13

Standard Account

	2012-2013* Appropriations	Actual Expenditures
Salaries and Wages	662,700	577,903
Employee Benefits	63,000	49,564
Transportation and Communication	-57,600	9,791
Services	287,400	313,373
Supplies and Equipment	8,000	1,150
Subtotal:	$ 963,500	$ 951,781
Variance		11,719
TOTAL	$ 963,500	$ 963,500

* Represents 12-13 printed estimates and in-year approvals

FINANCIAL INFORMATION FOR FISCAL YEAR 2013-14

Standard Account

	2013-2014* Appropriations	Actual Expenditures
Salaries and Wages	662,700	597,222
Employee Benefits	65,000	46,978
Transportation and Communication	22,000	29,577
Services	353,000	387,285
Supplies and Equipment	6,000	3,740
Subtotal:	$ 1,108,700	$ 1,064,802
Variance		43,898
TOTAL	$ 1,108,700	$ 1,108,700

* Represents 13-14 printed estimates and in-year approvals

Note: Statement of financial information prepared by Business Planning and Financial Management Branch, MGS.

4. Ontario Regulation 381/07

ONTARIO REGULATION 381/07

made under the

PUBLIC SERVICE OF ONTARIO ACT, 2006

Made: June 27, 2007
Filed: July 25, 2007
Published on e-Laws: July 27, 2007
Printed in *The Ontario Gazette*: August 11, 2007

CONFLICT OF INTEREST RULES FOR PUBLIC SERVANTS (MINISTRY) AND FORMER PUBLIC SERVANTS (MINISTRY)

CONTENTS

PART I
RULES FOR PUBLIC SERVANTS WHO WORK IN A MINISTRY
INTERPRETATION
1. Definitions
2. Application
PROHIBITED CONDUCT
3. Benefiting self, spouse or children
4. Accepting gifts
5. Disclosing confidential information
6. Giving preferential treatment
7. Hiring family members
8. Engaging in business, etc.
9. Participating in decision-making
MATTERS THAT MIGHT INVOLVE THE PRIVATE SECTOR
10. Interpretation
11. Duty to declare certain financial interests
12. Prohibition on certain purchases
13. List of positions
PART II
RULES FOR FORMER PUBLIC SERVANTS WHO WORKED IN A MINISTRY
INTERPRETATION
14. Definition
15. Application
PROHIBITED CONDUCT
16. Seeking preferential treatment, etc.
17. Disclosing confidential information
18. Restriction on lobbying
19. Restriction on employment, etc.
20. Restriction re certain transactions
PART III
COMMENCEMENT
21. Commencement

PART I
RULES FOR PUBLIC SERVANTS WHO WORK IN A MINISTRY

INTERPRETATION

Definitions

1. In this Part,

"confidential information" means information that is not available to the public and that, if disclosed, could result in harm to the Crown or could give the person to whom it is disclosed an advantage;

"gift" includes a benefit of any kind;

"spouse" means,

(a) a spouse as defined in section 1 of the *Family Law Act*, or

(b) either of two persons who live together in a conjugal relationship outside marriage.

Application

2. This Part applies to every public servant who works in a ministry.

PROHIBITED CONDUCT

Benefiting self, spouse or children

3. (1) A public servant shall not use or attempt to use his or her employment by the Crown to directly or indirectly benefit himself or herself or his or her spouse or children.

(2) A public servant shall not allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the Crown.

Accepting gifts

4. (1) A public servant shall not accept a gift from any of the following persons or entities if a reasonable person might conclude that the gift could influence the public servant when performing his or her duties to the Crown:

1. A person, group or entity that has dealings with the Crown.
2. A person, group or entity to whom the public servant provides services in the course of his or her duties to the Crown.
3. A person, group or entity that seeks to do business with the Crown.

(2) Subsection (1) shall not operate to prevent a public servant from accepting a gift of nominal value given as an expression of courtesy or hospitality if doing so is reasonable in the circumstances.

(3) A public servant who receives a gift in the circumstances described in subsection (1) shall notify his or her ethics executive.

Disclosing confidential information

5. (1) A public servant shall not disclose confidential information obtained during the course of his or her employment by the Crown to a person or entity unless the public servant is authorized to do so by law or by the Crown.

(2) A public servant shall not use confidential information in a business or undertaking outside his or her work for the Crown.

(3) A public servant shall not accept a gift directly or indirectly in exchange for disclosing confidential information.

Giving preferential treatment

6. (1) When performing his or her duties to the Crown, a public servant shall not give preferential treatment to any person or entity, including a person or entity in which the public servant or a member of his or her family or a friend has an interest.

(2) When performing his or her duties to the Crown, a public servant shall endeavour to avoid creating the appearance that preferential treatment is being given to a person or entity that could benefit from it.

(3) A public servant shall not offer assistance to a person or entity in dealing with the Crown other than assistance given in the ordinary course of the public servant's employment.

Hiring family members

7. (1) A public servant shall not, on behalf of the Crown, hire his or her spouse, child, parent or sibling.

(2) A public servant shall not, on behalf of the Crown, enter into a contract with his or her spouse, child, parent or sibling or with a person or entity in which any of them has a substantial interest.

(3) A public servant who hires a person on behalf of the Crown shall ensure that the person does not report to, or supervise the work of, the person's spouse, child, parent or sibling.

(4) A public servant who reports to, or supervises the work of, his or her spouse, child, parent or sibling shall notify his or her ethics executive.

Engaging in business, etc.

8. A public servant shall not become employed by or engage in a business or undertaking outside his or her employment by the Crown in any of the following circumstances:

1. If the public servant's private interests in connection with the employment or undertaking could conflict with his or her duties to the Crown.

2. If the employment or undertaking would interfere with the public servant's ability to perform his or her duties to the Crown.

3. If the employment is in a professional capacity and is likely to influence or detrimentally affect the public servant's ability to perform his or her duties to the Crown.

4. If the employment would constitute full-time employment for another person. However, this paragraph does not apply with respect to a public servant who is employed part-time by the Crown. This paragraph also does not apply with respect to a public servant who is on an authorized leave of absence from his or her position, but only if the employment is not contrary to or inconsistent with the terms of the leave of absence.

5. If, in connection with the employment or undertaking, any person would derive an advantage from the public servant's employment as a public servant.

6. If government premises, equipment or supplies are used in the employment or undertaking.

Participating in decision-making

9. (1) A public servant shall not participate in decision-making by the Crown with respect to a matter that the public servant is able to influence in the course of his or her duties if the public servant could benefit from the decision.

(2) Subsection (1) does not apply if the public servant obtains the prior approval of his or her ethics executive to participate in decision-making by the Crown with respect to the matter.

(3) A public servant who, in the course of his or her employment in a ministry, is a member of a body or group shall not participate in, or attempt to influence, decision-making by the body or group with respect to a matter if the public servant could benefit from the decision or if, as a result of the decision, the interests of the body or group could conflict with the interests of the Crown.

(4) A public servant described in subsection (3) shall inform the body or group if the circumstances described in that subsection exist.

Interpretation

10. (1) Sections 11 and 12 apply to every public servant who works in a ministry, who routinely works on one or more matters that might involve the private sector and who has access to confidential information about the matter obtained during the course of his or her employment by the Crown.

(2) In this section and in sections 11 and 12,

"matter that might involve the private sector" means a matter,

(a) that relates to services currently provided under a program of the Crown or by a public body, an agency of the Crown or a corporation controlled by the Crown with respect to which it is possible that a private sector entity will provide all or part of the financing for the services or will provide some or all of the services, and

(b) that has been referred to a ministry, a public body or an agency of the Crown by the Executive Council or a member of the Executive Council for review or implementation.

Duty to declare certain financial interests

11. (1) When a public servant described in subsection 10 (1) begins work on a matter that might involve the private sector, he or she shall make a declaration to the Conflict of Interest Commissioner in which the public servant discloses the following matters respecting his or her financial interests:

1. A legal or beneficial interest of the public servant in securities or derivatives of corporations or governments, other than the Government of Ontario.

2. A legal or beneficial interest of the public servant in a business entity or a commercial operation or in the assets of such an entity or operation.

3. A legal or beneficial interest of the public servant in real property.

4. A legal or beneficial interest of the public servant in a mutual fund that is operated as an investment club where,

i. its shares or units are held by not more than 50 persons and its indebtedness has never been offered to the public,

ii. it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and

iii. all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations.

(2) Despite subsection (1), the public servant is not required to disclose his or her legal or beneficial interest in any of the following:

1. A mutual fund within the meaning of subsection 1 (1) of the *Securities Act* other than a mutual fund described in paragraph 4 of subsection (1) of this Regulation.

2. Fixed-value securities issued or guaranteed by a government or a government agency.

3. A guaranteed investment certificate or similar financial instrument issued by a financial institution entitled by law to issue such instruments.

4. A registered pension plan, an employee benefit plan, an annuity or life insurance policy or a deferred profit sharing plan.

5. Real property that the public servant, or a member of his or her family, uses primarily as a residence or for recreational purposes.

(3) The public servant shall disclose the information required by subsection (1), with necessary modifications, in respect of his or her spouse and dependent children, but only to the extent that the legal or beneficial interests of the spouse or a child could create a conflict of interest.

(4) For the purpose of subsection (3), the public servant shall make reasonable efforts to obtain information about the financial interests described in subsection (1) of his or her spouse and dependent children.

(5) The public servant shall give the Conflict of Interest Commissioner a revised declaration whenever there is a change in any of the information required to be disclosed.

Prohibition on certain purchases

12. (1) A public servant described in subsection 10 (1) shall not purchase, or cause another person to purchase on his or her behalf, a legal or beneficial interest in an entity that is carrying on, or proposes to carry on, an activity relating to a matter that might involve the private sector.

(2) Despite subsection (1), a public servant may purchase an interest in a mutual fund (within the meaning of subsection 1 (1) of the *Securities Act*) that includes securities of a person or entity described in subsection (1) but not an interest in a mutual fund described in paragraph 4 of subsection 11 (1) of this Regulation that includes such securities.

(3) The prohibition described in subsection (1) ceases to have effect with respect to the matter,

(a) six months after the date on which the action in respect of the matter is completed; or

(b) six months after the date the Crown ceases to work on the matter.

List of positions

13. (1) The Public Service Commission shall maintain a current list of positions in which public servants work in a ministry and routinely work on one or more matters that might involve the private sector.

(2) The Commission shall ensure that public servants employed by the Crown in the positions described in subsection (1) are advised of the duties and restrictions imposed upon them under sections 11 and 12.

(3) Every ethics executive shall notify the Commission of changes to be made to the list with respect to those persons for whom he or she is the ethics executive.

PART II
RULES FOR FORMER PUBLIC SERVANTS WHO WORKED IN A MINISTRY

INTERPRETATION

Definition

14. In this Part,

"designated senior position" means any of the following positions:

1. The Secretary of the Cabinet.

2. Deputy minister, associate deputy minister or assistant deputy minister.

3. A position that is classified under subsection 33 (1) of the Act as SMG 2, XOFA 1, XOFA 2, ITX 2, ITX 3 or ITX 4.

Application

15. (1) This Part applies with respect to every former public servant who, immediately before he or she ceased to be a public servant, worked in a ministry.

(2) Despite subsection (1), this Part does not apply to a person who ceases be a public servant before the day on which section 57 of the Act comes into force.

PROHIBITED CONDUCT

Seeking preferential treatment, etc.

16. A former public servant shall not seek preferential treatment by, or privileged access to, public servants who work in a minister's office, a ministry or a public body.

Disclosing confidential information

17. (1) A former public servant shall not disclose confidential information obtained during the course of his or her employment by the Crown to a person or entity unless the former public servant is authorized to do so by law or by the Crown.

(2) A former public servant shall not use confidential information in a business or undertaking.

Restriction on lobbying

18. (1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position.

(2) For 12 months after ceasing to be a public servant, the former public servant shall not lobby any of the following persons on behalf of a public body or another person or entity:

1. A public servant who works in a ministry or public body in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.

2. The minister of any ministry in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.

3. A public servant who works in the office of a minister described in paragraph 2.

Restriction on employment, etc.

19. (1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position and who, at any time during the 12 months before he or she ceased to be employed as a public servant, in the course of his or her employment as a public servant,

(a) had substantial involvement with a public body or another person or entity; and

(b) had access to confidential information that, if it were to be disclosed to the public body, person or entity, could result in harm to the Crown or could give the public body, person or entity an unfair advantage in relation to one or more third parties.

(2) For 12 months after ceasing to be a public servant, the former public servant shall not accept employment with the public body, person or entity or serve as a member of the board of directors or other governing body of the public body, person or entity.

Restriction re certain transactions

20. (1) This section applies to a former public servant who, when he or she was a public servant working in a ministry, advised the Crown about a particular proceeding, negotiation or other transaction.

(2) The former public servant shall not advise or otherwise assist any public body or any other person or entity in connection with the particular proceeding, negotiation or other transaction until the Crown ceases to be involved in it.

(3) Despite subsection (2), the former public servant may continue to advise or otherwise assist the Crown in connection with the particular proceeding, negotiation or other transaction.

PART III
COMMENCEMENT

Commencement

21. This Regulation comes into force on the day section 57 of the Act comes into force.